SECOND DRAFT:
Prepared by the Legislative Council staff for the Taxation Committee
August 2012

Sixty-third
Legislative Assembly
of North Dakota

Introduced by

A BILL for an Act to create and enact section 57-02-08.9 of the North Dakota Century Code, relating to a residential property tax credit; to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to elimination of the farm residence property tax exemption; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.

(1) This ~~subsection~~subdivision must be construed to exempt only farm ~~buildings~~structures and improvements ~~only,~~ and may not be construed to exempt ~~from taxation~~ industrial plants, ~~or~~ structures ~~of any kind~~ not used or intended for use as a part of a farm plant, or structures used or intended for use as a ~~farm~~ residence.

(2) "Farm ~~buildings~~structures and improvements" includes a greenhouse or other building used primarily for the growing of horticultural or nursery products from seed, cuttings, or roots, if not used on more than an occasional basis for a showroom for the retail sale of horticultural or nursery products. A greenhouse or building used primarily for display and sale of grown horticultural or nursery products is not a farm ~~building~~structure or improvement.

(3) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to

assessment under chapter 57-05 is not exempt under this ~~subsection~~subdivision. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

(4) The following factors may not be considered in application of the exemption under this ~~subsection~~subdivision:

(a) Whether the farmer grows or purchases feed for animals raised on the farm.

(b) Whether animals being raised on the farm are owned by the farmer.

(c) Whether the farm's replacement animals are produced on the farm.

(d) Whether the farmer is engaged in contract feeding of animals on the farm.

b. The first three thousand three hundred seventy-five dollars of taxable valuation of a farm residence. It is the intent of the legislative assembly that this exemption as applied to a residence must be strictly construed and interpreted to exempt only a residence that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:

(1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years.

(2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of

annual net income, including net income of a spouse if married, during any of the three preceding calendar years. For purposes of this paragraph, "farmer" includes a:

(a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.

(b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.

(c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

(3) "Net income from farming activities" means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:

(a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.

(b) Interest expenses from farming activities which have been deducted in computing taxable income.

(c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

(4) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities.

(5) In addition to any of the provisions of this ~~subsection~~subdivision or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. This paragraph does not apply to a retired farmer or a beginning farmer as defined in paragraph 2.

(6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.

(7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. Section 57-02-08.9 of the North Dakota Century Code is created and enacted as follows:

57-02-08.9. Residential property tax credit - Certification - Distribution.

1. An individual is entitled to receive a reduction of three thousand six hundred dollars or eighty percent, whichever is less, of the taxable valuation of the individual's primary residence as provided in this section. A reduction under this section applies regardless of whether the individual is the head of a family. If an individual is entitled to a reduction in taxable valuation under this section and section 57-02-08.1 or 57-02-08.8, any reduction under sections 57-02-08.1 and 57-02-08.8 must be applied first and

<u>then the reduction under this section must be applied, not exceeding any remaining taxable valuation of the primary residence.</u>

<u>2.</u> <u>An estate or trust, or a corporation or passthrough entity that owns residential property used as part of a farming or ranching operation and which is not eligible for the farm residence exemption under subsection 15 of section 57-02-08 is entitled to a reduction as provided in subsection 1 if that residential property is occupied as a primary residence, as of the assessment date of the taxable year, by an individual who is a beneficiary of the estate or trust or who holds an ownership interest in the corporation or passthrough entity. Either the occupant or the entity that owns the residence may be the applicant for purposes of this subsection and the definition of primary residence under subsection 13. An estate, trust, corporation, or passthrough entity may not claim a reduction for more than one property under this section.</u>

<u>3.</u> <u>The reduction under this section continues to apply if the individual does not reside in the primary residence if the individual's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as that confinement lasts and the portion of the primary residence previously occupied by the individual is not rented to another individual.</u>

<u>4.</u> <u>Individuals residing together, as spouses or when one or more is a dependent of another, are entitled to only one reduction between or among them under this section. Individuals residing together, who are not spouses or dependents, who are coowners of the property are each entitled to a percentage of a full reduction under this section equal to their ownership interests in the property.</u>

<u>5.</u> <u>To claim the reduction under this section an applicant must sign and file with the assessor, by March first of the year for which a reduction is claimed, a claim form containing a verified statement of facts establishing the applicant's eligibility as of February first of that year.</u>

<u>6.</u> <u>The assessor shall attach the statement filed under subsection 5 to the assessment sheet and shall show the reduction on the assessment sheet.</u>

<u>7.</u> <u>All forms necessary to effectuate this section must be prescribed, designed, and made available by the tax commissioner. Claim forms must include the full name, address, and social security or taxpayer identification number of the applicant, and any other</u>

information prescribed by the tax commissioner. The tax commissioner shall include on claim forms a statement to the effect that the applicant, by signing, declares the application to be true, correct, and complete and subject to the penalties under section 12.1-11-02 for making a false statement in a governmental matter. The county director of tax equalization shall make these forms available to applicants upon request.

8. A social security or taxpayer identification number contained in any form under this section is confidential and may be disclosed only to county officers, the tax commissioner, or a court and only for purposes of administering this section. A county officer, the tax commissioner, or a court in possession of a form or other document under this section shall delete or obscure any social security or taxpayer identification number on any copy of the form or other document released to the public.

9. A reduction under this section terminates at the end of the taxable year for which the application was approved. A reduction under this section is effective for the entire taxable year for which the application was approved, without regard to any change of ownership of the residence which occurs after the assessment date.

10. If any applicant is found to have claimed and received a reduction under this section for more than one primary residence for the same taxable year, all reductions received by that applicant for that taxable year under this section must be canceled for that taxable year. The auditor of each county in which such property is located shall enter the amount of the canceled reduction as omitted property on the assessment roll of property that has escaped taxation.

11. Determinations concerning eligibility for a reduction under this section may be appealed through the informal equalization process and formal abatement process.

12. This section does not reduce the liability of any individual for special assessments levied upon any property.

13. For the purposes of this section:

    a. "Dependent" has the same meaning it has for federal income tax purposes.

    b. "Owned" means the applicant holds a present ownership interest, including ownership in fee simple, holding a present life estate or other terminable present ownership interest, or being a purchaser under a contract for deed, but does not include a mere right of occupancy or a tenancy under a lease.

c. "Primary residence" means a dwelling in this state owned and occupied by the applicant as that applicant's primary residence as of the assessment date of the taxable year and which is not eligible for the farm residence exemption under subsection 15 of section 57-02-08.

14. Before April first of each year, the county auditor of each county shall certify to the tax commissioner, on forms prescribed by the tax commissioner, the full name, address, and social security or taxpayer identification number of each individual or entity for whom the reduction under this section was allowed for the preceding year, the legal description of the property, the taxable value of the property, the dollar amount of each reduction in taxable value allowed, and the total of the tax mill rates for the preceding year of all taxing districts in which the property was contained, exclusive of any state mill rates, and any other information prescribed by the tax commissioner.

15. By June first of each year, the tax commissioner shall review the certifications under subsection 14, make any required corrections, and certify to the state treasurer for payment to each county the sum of the amounts computed by multiplying the reduction allowed for each qualifying primary residence in the county for the preceding year by the total of the tax mill rates for the preceding year of all taxing districts in which the property was contained. In reviewing certifications, the tax commissioner may refer to any income tax return information or other information available to the tax commissioner.

16. Upon receipt of the payment from the state treasurer, the county treasurer shall apportion and distribute it without delay to the county and to the taxing districts of the county on the same basis the general real estate tax for the preceding year is apportioned and distributed.

17. The tax commissioner shall certify annually to the state treasurer for deposit in the state medical center fund the amount computed by multiplying one mill times the reduction allowed under this section for the preceding year for all primary residences in the state.

18. Supplemental certifications by the county auditor and the tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed in this section to make any corrections necessary because of errors or approval of any

application for equalization or abatement filed by an individual or entity because all or part of the reduction under this section was not allowed.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $370,600,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of allocation of residential property tax credit funds to counties under section 57-02-08.9, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2012.